WP(C) 5162/2006
BEFORE
THE HON’BLE MR. JUSTICE B.P.KATAKEY

1. W.P.(C) No.5162/06
Bhaben Mohan & Anr.
& &Petitioners
Vs.
The State of Assam & Ors.
. &Respondents

2. W.P.(C) No.5163/06
Shri Manoj Kr. Barua & Anr.
& &Petitioners
Vs.
The State of Assam & Ors.
. &Respondents

3. W.P.(C) No.5164/06
Jibeswar Baishya & Anr.
& &Petitioners
Vs.
The State of Assam & Ors.
. &Respondents

4. W.P.(C) No.4833/06
Md. Sopior Zaman & Anr.
& &Petitioners
Vs.
The State of Assam & Ors.
. &Respondents

5. W.P.(C) No.5035/06
Hemanta Kumar Konwar.
& &Petitioner
Vs.
The State of Assam & Ors.
. &Respondents

6. W.P.(C) No.5033/06
Jagadish Ch. Barman.
& &Petitioner
Vs.
The State of Assam & Ors.
. &Respondents

7. W.P.(C) No.5032/06
Bubul Ch. Deori & Anr.
& &Petitioners
Vs.
The State of Assam & Ors.
. &Respondents

8. W.P.(C) No.5034/06
Mohan Dutta.
& &Petitioner
Vs.
The State of Assam & Ors.
. &Respondents

9. W.P.(C) No.5473/06
& &Petitioner
Shri Rana Borah.
Vs.
The State of Assam & Ors.
. &Respondents

10. W.P.(C) No.5474/06
& &Petitioner
Miss Mumina Begum.
Vs.
The State of Assam & Ors.
. &Respondents

11. W.P.(C) No.5475/06
& &Petitioners
Shri Kula Borah & Ors.
Vs.
The State of Assam & Ors.

12. W.P.(C) No.5221/06
& &Petitioner
Hemanta Kr. Konwar.
Vs.
The State of Assam & Ors.
. &Respondents

13. W.P.(C) No.5222/06
& &Petitioner
Jagadish Ch. Barman.
Vs.
The State of Assam & Ors.
. &Respondents

14. W.P.(C) No.5253/06
& &Petitioner
Assam State DDT Spray Workers Union.
Vs.
The State of Assam & Ors.
. &Respondents

15. W.P.(C) No.5574/06
& &Petitioners
Pranab Kr. Barman & Ors.
Vs.
The State of Assam & Ors.
. &Respondents

16. W.P.(C) No.5211/06
& &Petitioners
Shibendra Nath Ray & Ors.
Vs.
The State of Assam & Ors.
. &Respondents

17. W.P.(C) No.3070/06

Khanindra Das & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

18. W.P.(C) No.3792/06

Gulendra Brahma & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

19. W.P.(C) No.3793/06

Lakhi Ram Brahma & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

20. W.P.(C) No.4715/06

Sri Rakesh Basumotary & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

21. W.P.(C) No.4381/06

Sri Sital Choudhury & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

22. W.P.(C) No.3596/06

Rudra Ray & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

23. W.P.(C) No.4710/06

Ashok Kr. Ray & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

24. W.P.(C) No.4711/06

Sumitra Moran & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

25. W.P.(C) No.4713/06

Sri Madan Kr. Muchahary & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

26. W.P.(C) No.2965/06

Sri Lakshya Dhar Das & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

27. W.P.(C) No. 3597/06

Tarun Dhing & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

28. W.P.(C) No.4706/06

Sri Khagen Boro & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

29. W.P.(C) No.4727/06

Dhiren Chandra Daimari & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

30. W.P.(C) No.4810/06

Dhaniram Ram Narzary & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

31. W.P.(C) No.4382/06

Sri Uttam Chanda & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

32. W.P.(C) No.3599/06

Khagen Ch. Ray & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

33. W.P.(C) No.3798/06

Harson Marak & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

34. W.P.(C) No.3592/06

Sri Satyaban Sonwal & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

35. W.P.(C) No.5380/06

Gajen Saikia & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

36. W.P.(C) No.5381/06

Sri Anser Ali & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

37. W.P.(C) No.5382/06

Ramesh Sarmah & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

38. W.P.(C) No.5726/06

Niranjan Koch & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

39. W.P.(C) No.5723/06

Samin Ahmed Borbhuyan & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

40. W.P.(C) No.5728/06

Ajay Koch & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

41. W.P.(C) No.5731/06

Thahir Laskar & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

42. W.P.(C) No.6249/06

Sri Dipak Kr. Ray & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

43. W.P.(C) No.6247/06

Mridul Kr. Deka & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

44. W.P.(C) No.6246/06

Sri Mohuzol Hoque & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

45. W.P.(C) No.6242/06

Sri Upen Saikia & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

46. W.P.(C) No.5988/06

Anup Mahanta & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

47. W.P.(C) No.5990/06

Nabajyoti Mahanta & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

48. W.P.(C) No.5383/06

Purandar Saikia & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

49. W.P.(C) No.5379/06

Md. Siddik Ali & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.
. &Respondents

50. W.P.(C) No.5378/06

Sri Sushil Kr. Sial & Ors.
& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

51. W.P.(C) No.5377/06

Erkhau Brahma & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

52. W.P.(C) No.2979/06

Benudhar Nath & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

53. W.P.(C) No.34/06

The Assam State DDT Spray Worker.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

54. W.P.(C) No.429/06

Sonjit Das & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

55. W.P.(C) No.597/07

Jahangir Alom & Ors.

& &Petitioners

Vs.

The State of Assam & Ors.

. &Respondents

Advocates for the petitioners: Mr. A. B. Choudhury, Sr. Counsel
Mr. M Bhuyan,

Mr. U.K. Nair,
Mr.A. Rashid,
Ms. B. Devi,
Mr. S. Chouhan, Advocates.

Advocates for the respondents: Mr. N. Dutta, Sr. Cousnel,
Mr. D. Saikia, Advocate.

BEFORE
THE HON'BLE MR. JUSTICE B.P. KATAKEY

Date of Hearing: 08.02.2007

Date of Judgment: 23.02.2007

JUDGMENT AND ORDER (CAV)

This batch of writ petitions is relating to the selection and appointment to the post of Field Worker (FW)/Superior Field Worker (SFW)/Surveillance Worker (SW)/Laboratory Technician /Laboratory Assistant/Driver under Health & Family Welfare (A) Department, Government of Assam. The petitioners in W.P.(C) No.4833/06 (in short, 1st writ petition) are praying for a direction to the respondents to complete the process of selection initiated vide communication dated 17.12.2005 issued by the Joint Director of Health Services (Malaria), Assam to the Director of Employment & Craftsmen Training, Assam requesting to sponsor the candidates as well as the notices published in the newspapers, to publish the select list and also to make appointment pursuant to such select list. The petitioners in W.P.(C) No.5221/06, W.P.(C) No.5162/06, W.P.(C) No.5163/06, W.P.(C) No.5164/06, W.P.(C) No.5035/06, W.P.(C) No.5033/06, W.P.(C) No.5032/06, W.P.(C) No.5034/06, W.P.(C) No.5473/06, W.P.(C) No.5474/06, W.P.(C) No.5475/06, W.P.(C) No.5222/06, W.P.(C) No.5574/06 and W.P.(C) No.5211/06, (in short, 2nd batch of writ petitions) are challenging the decision of the Government dated 04.09.2006 to cancel the process of recruitment initiated by the aforesaid communication dated 17.12.2005 and also the notice published in the newspaper as well as the fresh advertisement dated 29.09.2006 issued by the Director of Health Services, Assam initiating a fresh process of selection, on the ground that the subsequent process of the selection initiated by the said notification is illegal and arbitrary and also on the ground that the fresh process has been initiated without there being any good and sufficient reason for canceling the earlier process. The petitioners in W.P.(C) No.5253/06 (in short, 3rd writ petition), who claim to be the Seasonal Workers engaged for a particular period of time in spraying DDT under a Government of India Scheme, have also challenged the process of selection initiated vide advertisement dated 29.09.2006 on the ground of its being vague as well as for not having a clause for giving due weightage to the services rendered by them as Seasonal Worker, in making selection to the post advertised, contending that they were discharging similar nature of duties under the Central Government Sponsored Scheme with that of the duties and responsibilities as SW/SFW. The petitioners in W.P.(C) No.3070/06, W.P.(C) No.2979/06, W.P.(C) No.597/07, W.P.(C) No.3792/06, W.P.(C) No.3793/06, W.P.(C) No.4715/06, W.P.(C) No.4381/06, W.P.(C) No.3592/06, W.P.(C) No.3596/06, W.P.(C) No.4710/06, W.P.(C) No.4711/06, W.P.(C) No.4713/06, W.P.(C) No.2965/06, W.P.(C) No.3597/06, W.P.(C) No.4706/06, W.P.(C) No.4727/06, W.P.(C) No.4810/06, W.P.(C) No.4382/06, W.P.(C) No.3599/06, W.P.(C) No.3798/06, W.P.(C) No.5988/06, W.P.(C) No.5380/06, W.P.(C) No.5381/06, W.P.(C) No.5382/06, W.P.(C) No.5726/06, W.P.(C) No.5723/06, W.P.(C) No.5728/06, W.P.(C) No.5731/06, W.P.(C) No.6249/06, W.P.(C) No.5377/06, W.P.(C) No.6247/06, W.P.(C) No.6246/06, W.P.(C) No.6242/06, W.P.(C) No.5378/06, W.P.(C) No.5990/06, W.P.(C) No.5383/06, W.P.(C) No.5379/06, (in short, 4th batch of writ petitions) praying for a direction to streamline the process for selection process for engagement as FW/SFW for DDT Spray Work and also to give due weightage to the period of service rendered by them in making selection for regular appointment to the posts of FW/SFW. The petitioners in W.P.(C) No.34/06, W.P.(C) No.429/06, (in short, 5th batch of writ petitions) who also claim to have worked as DDT Spray Worker under the Government of India Scheme, challenge the earlier process of selection initiated vide communication dated 17.12.2005 issued by the Joint Director (Malaria) requesting the Employment Exchange to sponsor the candidates as well as the employment news dated 22.12.2005 published in the newspaper on the ground that such communications/notifications do not contain any clause giving due weightage to the services rendered by them as DDT Spray Worker under the Government of India Scheme and also prays for issuance of a direction to the respondent authorities to give weightage to their past services as DDT Spray Workers.

2. I have heard Mr. A.B. Choudhury, the learned Sr. counsel, Mr. M.

Bhuyan, Mr. U.K. Nair, Ms. B. Devi, Mr. A. Rashid and Mr. S. Chowhan, the learned counsel appearing on behalf of the petitioners in different writ petitions and also Mr. N. Dutta, the learned Sr. counsel assisted by Mr. D. Saikia, the learned counsel appearing on behalf of the respondents.

3. As agreed to by the learned counsel for the parties and as the writ petitions are relating to the selection and recruitment to the aforesaid posts, all the writ petitions are taken up together for hearing and disposal.

4. Mr. A.B. Choudhury, the learned Sr. counsel appearing on behalf of the petitioners in the 1st as well as the 2nd batch of writ petitions has submitted that the authority having initiated the process of selection to the said posts by issuing the communication dated 17.12.2005 requesting the Employment Exchange to sponsor the candidates giving details of district wise number of posts available, qualification, the scale of pay etc. as well as the employment news dated 23.12.2005 published in the newspapers, such process of selection has to be completed and the select list pursuant to such selection has to be prepared, more so, when the candidates were interviewed by the selection committee constituted for that purpose. It has further been submitted by the learned Sr. counsel that the authority in a most arbitrary and unreasonable manner has done away with such process of selection initiated by taking a decision which has been communicated in the communication dated 04.09.2006 and published in the newspaper on 21.09.2006, on the guise of same being not inconformity with the guideline dated 17.12.2005 issued by the Government of Assam in Health & Family Welfare (A) Department to the Director of Health Services, though the conditions stipulated in such guideline for making recruitment were fulfilled in the earlier process of selection initiated vide communication dated 17.12.2005 issued by the Joint Director (Malaria) to the Director of Employment and Craftsmen Training. Mr. Choudhury has further submitted that the authority can only for good and sufficient reason initiate a fresh process of selection by canceling an existing process of selection. But, in the present case, there is absolutely no reason whatsoever for canceling the earlier process and for initiating a new process, as the grounds on which such process has been cancelled are non-existent. Further, according to the learned counsel this has been done for the purpose of appointing some persons of their choice.

5. Referring to the guideline dated 17.12.2005, Mr. Choudhury, the learned Sr. counsel has submitted that the requirement of the guideline dated 17.12.2005 is to get the names of intending candidates from the district Employment Exchanges stipulating the qualification, age and reservation criteria, which have duly been complied with by issuing the communication dated 17.12.2005 by the Joint Director (Malaria) to the Director of Employment & Craftsmen Training requesting him to sponsor the candidates from the District Employment Exchanges of the State and stipulating therein the qualification, age and reservation criteria. It has further been submitted by the learned Sr. counsel that under Clause 2 of the said guideline dated 17.12.2005 what required to be notified, in the local leading newspapers, is the notice to the affect that the names of the candidates have been called from the District Employment Exchange of the State and such recruitment has also been fulfilled as such employment notices were issued by the authority in the local leading newspapers published from Assam on 21.12.2005. Mr. Choudhury has further contended that the requirement of Clause 3 of such guideline regarding publication of qualification, age and reservation criteria means the issuance of the request to the District Employment Exchange to sponsor the candidates and it does not means publication in the newspaper as the said guideline does not provide for such a course of action to be adopted. The learned Sr. counsel therefore, submits that the ground on which the said process of selection has been cancelled by the authority as communicated vide communication dated 04.09.2006 as well as the subsequent paper notification on 21.09.2006 in that regard and also the stand of the respondents in their affidavit are non-existent. Referring to the decision of the Apex Court in Union of India & Ors. -Vs- N. Har

gopal & Ors. reported in 1987 (3) SCC, 308, the learned Sr. counsel has submitted that it cannot be said that such process initiated by the authority for selection of candidates and appointment, by notifying the Employment Exchanges is bad being arbitrary on the ground that proper advertisement has not been issued.

6. Mr. Choudhury, the learned Sr. counsel submits that the fresh process of selection initiated vide advertisement dated 29.09.2006 required to be interfered with as the authority cannot be allowed to act on its own sweet will and the necessary directions may be issued to the authority to complete the process of selection initiated vide employment notice dated 17.12.2005 by publishing the select list and making appointment pursuant to such select list.

7. Mr. Bhuyan, the learned counsel appearing for the petitioners in the 3rd writ petition and as well as the 4th batch of writ petitions has submitted that the respondent authorities having framed the guideline for the purpose of recruitment to the post in question is required to follow the same and the process initiated by means of an advertisement or employment notice to the Employment Exchanges must conform to such guidelines. According to Mr. Bhuyan, the advertisement dated 29.09.2006 (the subsequent process of selection) suffers from vagueness and also bad on the ground of violation of the Governments own guideline dated 17.12.2005, as the advertisement does not specify the different categories of post in Grade-IV though it consists of FW/SFW/Peon/ van-cleaner/chowkidar/sweeper etc. The learned counsel further submits that the nature of duties attached to different categories of post in Grade-IV being different, the qualification etc. are bound to be different and therefore, the same has also to be notified in the advertisement, which having not been done in the advertisement dated 29.09.2006, the same is to be set aside by this Court and the authority has to initiate a fresh process by fulfilling all the recruitment before making any appointment to such posts under the Government. Mr. Bhuyan, the learned counsel has further contended that there is no dispute to the fact that the persons concerned in these writ petitions were engaged as Seasonal Workers for the purpose of spraying DDT, no doubt under a Government of India Scheme, but the nature of duties performed by them being similar and identical to the nature of duties to be performed as FW/SFW, the Government being the model employer has to make some provision giving some preference to such persons by giving due weightage to the past services rendered by them as DDT Spray Worker, as has been directed in W.P.(C) No. 1495/03. Mr. Bhuyan, the learned counsel submits that the persons concerned in these writ petitions having been engaged for spraying DDT under the Central Government Sponsored Scheme, the authority cannot subsequently engaged another batch of persons for the same work and has to engage such persons in every season in such capacity by treating them as permanent Seasonal Worker. According to the learned counsel, the authority instead of engaging those persons engaged other persons in other seasons that too in a very haphazard manner and without following any procedure whatsoever. Mr. Bhuyan in support of his contention has placed reliance on the decision of the Apex Court in Delhi Transport Corporation -Vs- DTC Mazdoor Congress & Ors. reported in 1991 (Supply) (1) SCC, 600 as well as in Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. & Anr. -Vs- Employment Union & Anr. reported in 19994 (Supply) (3) SCC, 385. Mr. Rashid and Ms. B. Devi, the learned counsel appearing on behalf of petitioners in some writ petitions in these batches have adopted the arguments of Mr. Bhuyan.

8. Mr. Chouhan and Mr. Nair, the learned counsel for the petitioners in the 5th batch of writ petitions have submitted that as in the process of selection initiated by the respondents by issuing the employment notice dated 17.12.2005 and employment news dated 21.12.2005 and 23.12.2005 there is no provision for giving due weightage to the services rendered by the persons concerned as DDT Spray Workers under the Central Government Sponsored Scheme, the said process is to be interfered with by this Court, in view of the fact that by not giving such weightage to their past services, the period of services rendered by them has been totally ignored by the authority. It has been submitted by the learned

counsel that they having performed the similar nature of work under a Government of India Sponsored Scheme, the respondent authority being the model employer is required to give due weightage to their past services while making selection in any post carrying similar nature of duties and responsibilities, which has not been done in the instant case. According to the learned counsel, the respondent authorities may, therefore, be directed to give due weightage to their past services while making selection to the post of FW/SFW and also, if necessary to condone the upper age limit for making such recruitment.

9. Mr. Dutta, the learned Sr. counsel appearing on behalf of the respondents in all the writ petitions, referring to the statements made in the affidavit-in-opposition as well as the the records produced before this Court has submitted that the authority on the basis of the communication issued from the Directorate of Health Services, Assam including the communication dated 21.09.2005 issued by the Director of Health Services decided to fill up 672 vacant posts of Grade-III and 91 vacant posts of Grade-IV under the Joint Director of Health Services (Malaria) (NVBDCP) of the Directorate of Health Services and for that purpose a guideline has been framed for making such recruitment, as there is no recruitment rule governing such recruitment, which was communicated by the under Secretary to the Government of Assam, Health & Family Welfare (A) Department to the Director of Health Services, Assam vide communication dated 17.12.2005 laying down the procedure to be followed in making such selection and recruitment. Mr. Dutta has submitted that the Joint Director of Health Services (Malaria) on the same day, i.e. 17.12.2005, issued the employment notice to the Director of Employment and Craftsmen Training requesting the District Employment Exchanges to sponsor the names of candidates, restricting the same to the ratio of 1:20, in complete violation of the Government’s guideline dated 17.12.2005. It has further been submitted that though in the said guideline there is a requirement of publishing the qualification, age and reservation criteria in the newspaper the same has not been fulfilled as is evident from the employment news published in the newspapers on 21.12.2005, which also do not contain the number of posts required to be filled.

10. Mr. Dutta referring to the records has further submitted that the earlier process initiated vide employment notice dated 17.12.2005 was nothing but a farce and the Joint Director of Health Services (Malaria) was in hot haste to complete the process even without complying with the Government guideline dated 17.12.2005 as well as the requirement of the Employment Exchange (compulsory notification of vacancy) Act, 1959 (in short, the 1959 Act) and the rules framed thereunder, requires the authority to notify the Employment Exchanges at least 15 days before the date on which the applicants are be interviewed and tested. According to the learned Sr. counsel, it is evident from the records that the Director of Employment and Craftsmen Training in his communication dated 20.12.2005 has informed the Joint Director of Health Services (Malaria) pursuant to the employment notice dated 17.12.2005 that the same is not in accordance with the 1959 Act and the rules framed thereunder and, therefore, requested him to notify the vacancy in terms of the provisions contained in the said Act and the Rules and the Joint Director of Health Services (Malaria), thereafter, submitted the requirement in the required format on 21.12.2005. It has further been submitted that though the Director of Employment and Craftsmen Training in his said communication dated 20.12.2005 informed the Joint Director of Health Services (Malaria) that it is not possible on the part of the said Directorate to issue the call letters to all the candidates individually due to shortage time and fund and informed the Joint Director of Health Services (Malaria) to issue the call letters to the candidates for interview/test, the Assistant Director of Employment, District Employment Exchange, Dhubri issued the call letter dated 27.12.2005 to the candidate though such a course of action was decided not to be taken from the side of the employment exchanges, by the Director in his communication dated 20.12.2005. The learned Sr. counsel further submits that in the guideline dated 17.12.2005 there was no ratio fixed for the purpose of sponsoring the names of the can

didates against any post but the Joint Director of Health Services (Malaria) in the employment notice dated 17.12.2005 directed the employment exchange to the s ponsor candidates in the ratio on 1:20, thereby giving the scope for arbitrarine ss, as, such employment notice does not contained any criteria as to how and on what basis the employment exchange is to select the names of 20 persons against 1 post.

11. It has further been submitted by the learned Sr. counsel that th ough the guideline dated 17.12.2005 requires publication of employment notice in the paper so as to give wide publicity about the selection, stipulating therein the number of posts available, the age, qualification, reservation policy etc., the same has not been done in the employment news published on 21.12.2005. The Government, according to the learned Sr. counsel, keeping in view all these disc repancies deliberated over the matter and ultimately took a decision to cancel t he said process and to initiate a fresh process, which decision was communicated by the Under Secretary, Government of Assam, Health & Family Welfare (A) Depart ment to the Director of Health Services vide communication dated 04.09.2006 and was notified in the newspaper on 21.09.2006. The learned Sr. counsel, therefore, submits that the earlier process of selection was not cancelled without any rea sonable justification and has been cancelled for good and sufficient reason and thereafter, a new process of selection has been initiated.

12. According to the learned Sr. counsel, the selection pursuant to the earlier process having not been completed, the process of interview having n ot been over and the select list having not been prepared and published, the pet itioners have no right to claim that such process has to be continued, more so, when such process was initiated not in terms of the Government guideline dated 1 7.12.2005 and without adopting a fair procedure required to be followed in makin g selection and appointment to any civil post under the State. Mr. Dutta, the le arned Sr. counsel further submits that in the earlier process of selection there was no wide publicity of the notice of recruitment and the selection was sought to be limited to a particular number, which is against the public policy, more so, when a large number of unemployed persons are available. By initiating the s ubsequent process vide advertisement dated 29.09.2006 the authority, according t o the learned Sr. counsel, has given scope to all persons who fulfill the condit ions stipulated in the advertisement to participate in the selection process. Ac cording to the learned Sr. counsel in any case no prejudice has been caused to t he petitioners in canceling the earlier process as well as in initiating the fre sh process, as, it is evident from the records as well as the advertisement date d 29.09.2006 that the persons who participated in the selection process pursuant to the employment notice dated 17.12.2005 shall also be considered for the purp ose of selection initiated by the fresh process vide the said advertisement date d 29.09.2006.

13. Regarding the 3rd, 4th and 5th batch of writ petitions, Mr. Dutt a has submitted that the persons concerned in these batches of writ petitions cl aim that they were engaged for a certain period of time as DDT Spray Worker unde r a Government of India Scheme and according to the petitioners themselves witho ut following any procedure for making such engagement and in a most haphazard ma nner. It has been submitted by the learned Sr. counsel that it is the case of th e petitioners in those batch of writ petitions that no procedure whatsoever were followed while making such engagement and therefore, the petitioners cannot cla im that they should only be made permanent Seasonal Worker and not the other, as in the event of granting such relief, it will amount to regularizing the illega l engagement, which cannot be done under the law.

14. Mr. Dutta, relating to the contentions of the petitioners in 3rd writ petitions challenging the advertisement dated 29.09.2006, has submitted th at the said advertisement does not suffer from any vagueness and has been issued in strict conformity with the guideline dated 17.12.2005, as the number of post

s available, the age qualification and the number of posts reserved for reserved category candidates have been specifically mentioned in such advertisement as required under the 17.12.2005 guideline. Mr. Dutta, the learned Sr. counsel, however, submits that as Grade-IV posts consists of different categories of posts, the Government is ready and willing to issue corrigendum by giving break up of different posts including the number of posts available in each category. However, according to the learned Sr. counsel, the advertisement dated 29.09.2006 cannot be termed as the illegal in the absence of making such classification, as all the posts are in Grade-IV and do not require any specialized qualification.

15. Regarding the contentions of the learned counsel for the petitioners in the 3rd, 4th and 5th batch of writ petitions relating to the preference to be given and/or claiming due weightage for the services rendered by the persons concerned as DDT Spray Worker under the Central Government Sponsored Scheme, while making selection as FW/SFW under the State Government, the learned Sr. counsel, Mr. Dutta has submitted that before giving such preference/weightage it has to be ascertained as to whether the services rendered by the persons concerned as DDT Spray Worker are anyway can be treated as experience, keeping in view the nature of duties and responsibilities attached to the post of SF/SFW and after ascertaining the same the Government is to take a decision what preference/weightage is to be given, however, it cannot be said that all the posts are to be filled up by those candidates only, even if, such preference/weightage is given, as it will amount to depriving the fresh persons to participate in the process of selection, which will be contrary to Articles 14 and 16 of the Constitution of India. Mr. Dutta, the learned Sr. counsel, in his usual fairness, however, has submitted that the Government before initiating the process of test/interview pursuant to the advertisement dated 29.09.2006, shall consider as to whether such preference/weightage of the past services, as claimed by the person concerned, can be given and shall also consider as to nature and extent of preference/ weightage to be given. It has further been fairly submitted by the learned Sr. counsel that the authority for that purpose, after taking such decision, shall issue a corrigendum so that the persons claiming such benefit may also submit their applications and the process of selection shall only be undertaken thereafter. Mr. Dutta, the learned Sr. counsel further submits that the Government shall also consider and take a decision regarding the relaxation of upper age limit in respect of those persons and notify the same by issuing the necessary corrigendum.

16. I have considered the submissions of the learned counsel for the parties as well as perused the pleadings in the writ petitions and also the affidavit-in-opposition filed. I have also perused the records produced by the respondents before this Court.

17. Pursuant to the Government’s decision to fill up certain vacant Grade-III or Grade-IV posts under the Directorate of the Health & Family Welfare Department, keeping in view the absence of the recruitment rules governing the conditions of recruitment, the Government in Health & Family Welfare Department issued a guideline which was circulated vide communication dated 17.12.2005 by the Under Secretary to the Government of Assam, Health & Family Welfare (A) Department to the Director of Health Services, Assam, directing the authority to follow the procedure contained in the said guideline. The procedures required to be adopted in making selection and recruitment as contained in the guideline dated 17.12.2005 are quoted below:

1. The names of the intending candidates are to be called for from the District Employment Exchanges of the State.

2. Notice has to be published in the local leading newspapers to the effect that names of the candidates have been called for from the District Employment Exchange of the State, subject to fulfillment of requisite qualification.

3. Qualification, Age and reservation criteria in respect of ST(P), ST(H), SC, OBC, MOBC and Women etc. has to be clearly published and strictly followed.

4. Selection of the candidates may be made through a Selection Committee du ly constituted by the Government.

5. The entire process of selection of candidates has to be completed within 30 (thirty) days from the date of advertisement.

6. There shall not be any adhoc appointment.

18. In the absence of any recruitment rule the guidelines framed for the purpose of making recruitment to the posts concerned shall prevail. The pro cess of selection initiated thereafter, has to be in conformity with such guidel ine. The Joint Director, Health Services (Malaria), Assam after such decision of the Government to fill up the posts and framing the guidelines, issued the empl oyment notice dated 17.12.2005 requesting the Director of Employment and Craftsm en Training to sponsor candidates, who registered their names in the different e mployment exchanges in the State, in the ratio of 1:20, within 15 days from the date of issue of such letter, indicating the names of the posts, age, the qualif ication, the pay scale as well as the district wise vacancy position. The Joint Director of Health Services (Malaria), Assam vide the said employment notice has also informed the Director of Employment and Craftsmen Training the date and ti me fixed for interview in respect of different districts. The Joint Director, He alth Services (Malaria), thereafter, published the employment news on 21.12.2005 in two newspapers, one published in English and the other in Assamese. Accordin g to the petitioners concerned in the 1st writ petition, their names were sponso red by the local employment exchange for selection pursuant to the said employme nt notice dated 17.12.2005 and were in fact interviewed by the selection committ ee pursuant to the interview call letters dated 27/28.12.2005 issued by the Assi stant Directors/Assistant Employment Officers of different employment exchanges. However, the said process of selection was subsequently cancelled by the author ity and initiated a fresh process by issuing the advertisement dated 29.09.2006.

19. The question which requires to be decided in the 1st writ petiti on is whether the process of selection initiated by the employment notice dated 17.12.2005 and the employment news dated 21.12.2005 was in conformity with the g uideline dated 17.12.2005 and also fulfills the requirement in making selection and appointment in Civil Posts under the State and whether the authority was jus tified in canceling the said process by initiating a fresh process of selection by issuing advertisement dated 29.09.2006.

20. The guideline dated 17.12.2005, as discussed above, requires cal ling for the names of intending candidates from the District Employment Exchange s of the State and also publication of notice in the local leading newspapers to that effect. It also requires that the qualification, age and reservation crite ria in respect of ST(P)/ST(H)/SC/OBC/MOBC and women etc. has to be clearly publi shed and strictly followed. It transpires from reading of the Clauses 1, 2 and 3 of the said guideline that apart from requesting the District Employment Exchan ges to sponsor the candidates, there has to be publication of notice of employme nt in the local leading newspapers stipulating therein the qualification, age an d reservation criteria so that all intending candidates fulfilling such conditio ns can offer their candidature and the authority have more candidates to select from.

21. It appears from the 1st and the 2nd batch of writ petitions, tha t the Joint Director (Malaria) no doubt by issuing the employment notice dated 1 7.12.2005 to the Director of Employment & Craftsmen Training comply with the req uirements of Clause 1 of the guideline dated 17.12.2005 whereby and whereunder t he Director was requested to send the names of the candidates who have registere d in the different employment exchanges in Assam, enclosing therewith the distri

ct wise vacancy position as well as the different categories of posts, qualification prescribed and also the pay scale attached to it. However, the Joint Director (Malaria), by the said employment notice restricted the number of candidates to be sponsored to 1:20, though the guideline dated 17.12.2005 does not contain any such stipulation.

22. The unemployment problem faced by the State of Assam is not in dispute. It is also not in dispute that there are large numbers of persons registered in different employment exchanges in Assam. The Joint Director (Malaria) in the employment notice dated 17.12.2005 requested the Director of Employment and Craftsmen Training to sponsor the candidate at the ratio of 1:20, without laying down any criteria as to how the names of 20 persons for the purpose of sponsoring against one post is to be selected. There is absolutely no criteria fixed for that purpose, thereby giving the employment exchanges the power to make selection of 20 candidates to be sponsored against one vacancy. Such a course of action may leads to the favoritism in sponsoring the names of candidates pursuant to such employment notice dated 17.12.2005, which the Government has to avoid as has been done in the instant case. In the matter of making employment to Government services, the process initiated must be fair, transparent and in accordance with the constitutional requirement relating to the public employment.

23. It also appears from the guideline dated 17.12.2005 that the employment notice has to be issued in the local leading newspapers stipulating the age, qualification as well as the post reserved for reserve category candidates. To prevent arbitrariness in action the authority as far as practicable should also notify the number of vacancies available for recruitment. In the instant cases, it is evident from the guideline dated 17.12.2005 that though the number of vacancies in Grade-IV post were ascertained, the same has not been notified in the newspaper nor such newspaper notifications contain the requirements of age, educational qualification as well as the post reserved for reserve category candidates. Such recruitment process initiated by the Joint Director (Malaria), hence contrary to the guideline dated 17.12.2005 formulated by the Government of Assam, Health & Family Welfare (A) Department.

24. The Government of Assam, Health & Family Welfare (A) Department, therefore, deliberated on the matter relating to the employment notice issued by the Joint Director (Malaria) as well as the selection process initiated by him and after due deliberation and on consideration of those factors as mentioned above it has been decided to cancel such process, the same being contrary to the guideline dated 17.12.2005 as well as being contrary to the established procedure for making employment to public services and such decision was communicated by the Government to the Director vide communication dated 04.09.2006. Consequently, the paper notification dated 21.09.2006 was issued intimating all concerned about such cancellation of the selection process.

25. Further, the records produce before this Court gives an impression as if the earlier process of selection initiated by the employment notice dated 17.12.2005 was sought to be hurried through. The record reveals that the Director of Employment & Craftsmen Training on receipt of the employment notice dated 17.12.2005, informed the Joint Director (Malaria) vide communication dated 20.12.2005 intimating him that the employment notice dated 17.12.2005 was not in accordance with the 1959 Act and the Rules framed thereunder, therefore, the Joint Director was requested to notify the vacancies as prescribed under the said Act and the Rules. By the said communication, the Joint Director, Health Services (Malaria) was also informed by the Director of Employment & Craftsmen Training that due to insufficiency of time and fund it is not possible to the employment exchanges to issue the call letters to the individual candidates from their offices and therefore, requested the Joint Director to issue the interview/test call letters to the candidates from his office. Records also reveal that the Joint Director, Health Services (Malaria) on receipt of the said communication dated 20.1

2.2005 notified the vacancies in the prescribed format and manner by sending the same to the Director of Employment & Craftsmen Training vide communication dated 21.12.2005, which, even if, presume to have received by the office of the Director at Guwahati on 22.12.2005, it is not comprehensible as to how the different employment exchanges in the State of Assam can issue an interview call letter either on 27/28/12.2005 as contended by the writ petitioners in the writ petitions, when there were intervening holidays because of 4th Saturday and Sunday. The record produced before this Court gives an impression that the required particulars submitted by the Joint Director, Health Services (Malaria) on 21.12.2005 were not circular to different Employment Exchanges in the State under the Director of Employment & Craftsmen Training before issuance of call letters by them. Record also does not reveal the manner of selecting 20 persons for sponsoring by the Employment Exchanges, against one post, in the ratio of 1:20. Further, it is no comprehensible as to how, within six days of formally notifying the vacancies by the Joint Director, such candidates can be selected for sponsoring by the Employment Exchanges, when there were intervening holidays, as discussed above. The procedure adopted by the authorities pursuant to the first employment notice dated 17.12.2005 caused doubt in the mind of the Court about its fairness and reasonableness.

26. The records produced before this Court reveal that the Government having regard to the facts and circumstances relating to the process of selection initiated vide employment notice dated 17.12.2005 cancelled such process and decided to initiate the process afresh and accordingly the advertisement dated 29.09.2006 was issued. It also appears from the records that because of restriction imposed in the employment notice dated 17.12.2005 and for non publication of the employment notice in the newspaper in terms of the guideline, there were less number of candidates in the said process and on the other hand, because of the subsequent advertisement dated 29.09.2006 the number of candidates who applied for selection is much more than the candidates available under the earlier selection process. As discussed above, it is also evident from the subsequent advertisement dated 29.09.2006 that the candidates involved in the earlier process of selection are not required to apply again and they will be called for interview and hence will be considered for selection. Therefore, by initiating the fresh process of selection, no prejudice has been caused to any persons who sought selection pursuant to the earlier process of selection.

27. The Apex Court in N. Hargopal (supra) on which the learned counsel for the petitioners in the 2nd batch of writ petitions has placed reliance, keeping in view the provision contained in 1959 Act has observed that in any public employment, it is necessary to eliminate arbitrariness and favouritism and to introduce uniformity of standards and orderliness. There has to be an element of procedural fairness in recruitment. Arbitrariness in making appointment much necessarily be avoided if Articles 14 and 16 has to be given any meaning. The Apex Court keeping in view the facts involved in the said case has further observed that in the absence of a better method of recruitment any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. In the instant case, the Government has framed the guideline dated 17.12.2005 for the purpose of making recruitment, which requires newspaper publication of the notice of employment containing the age, qualification and the reservation policy but the authority though notified the employment exchanges, did not issue any paper publication as required. When such guideline has been framed, notification to the employment exchange under the 1959 Act alone will not be sufficient to hold that such process of selection is fair and reasonable.

28. In view of the aforesaid discussion, I am of the view that the Government for good and sufficient reason has decided to cancel the earlier process of selection and initiated a fresh process by issuing the advertisement dated 29.09.2006. The subsequent process initiated, in any case, will not cause any p

rejudice to the persons who were considered for selection in terms of the earlier process. Hence 1st and 2nd batches of writ petitions, whereby a direction to the respondent authorities is sought for to complete the earlier process of selection, to publish the select list and to make appointment pursuant thereto as well as challenging the Government's decision to cancel the said process and initiation of a fresh process for selection as has been done by publication of the advertisement dated 29.09.2006, are devoid of any merit and hence dismissed.

29. In 5th batch of writ petitions, the petitioners have challenged the earlier process of selection, which the persons concerned in the 1st and the 2nd batch of writ petitions claim to be fair and reasonable, on the ground that there is no stipulation for giving due weightage to the services rendered by them as DDT Spray Worker under a Government of India Sponsored Scheme. In the 3rd writ petition, as discussed above, the petitioners have challenged the fresh process of selection initiated vide the advertisement dated 29.09.2006 on the ground of its being vague and also on the ground of not having any stipulation giving due weightage to the services rendered by them as DDT Spray Worker under a Government of India Sponsored Scheme.

30. There is no dispute that a number of persons like the writ petitioners involved in the 3rd and 4th batch of writ petitions were engaged for a particular period of time as DDT Spray Worker under a Government of India Sponsored Scheme. It appears from the pleadings in the said writ petitions that the petitioners claim that no procedure was followed in making such engagement and such engagement was made in a most haphazard manner. In some of the writ petitions, the petitioners are even praying for streamlining the procedure for selection of candidates for such engagement. It is not the case of the writ petitioners involved in those writ petitions, that they were selected and engaged pursuant to any selection made for that purpose. In the absence of any selection, the claim made by the petitioners that they should be regularized in services cannot be entertained, more so, admittedly when they were appointed under a scheme, as such appointment cannot be beyond the scheme period. Those are in fact not permanent posts and hence there is no question of regularization in service.

31. The petitioners in the 3rd writ petition have also claimed for treating them as permanent Seasonal Worker for which the learned counsel for the petitioners have placed reliance on the decision of the Apex Court in Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. & Anr. (supra). As discussed above, admittedly the persons concerned in this writ petition were not selected prior to their engagement for a particular period of time and according to the petitioners persons were engaged as DDT Spray Worker without following any procedure whatsoever and in a most arbitrary and illegal manner. Therefore, the contention of the writ petitioners that the person involved in those writ petitions should be made permanent Seasonal Worker and they should alone be engaged as DDT Spray Worker in subsequent periods, to the exclusion of others, cannot be accepted. Placing reliance on the decision of Delhi Transport Corporation (Supra), the learned counsel for the petitioners further contended that as right to life includes the right to livelihood, it cannot hang on the fancies of individual authority, by engaging different persons as Seasonal Workers in different seasons and the petitioners are to be engaged. Such argument of the learned counsel, in view of the stand of the writ petitioners in this writ petition that there was no selection at all even while engaging them, cannot be accepted. However, at the same time, there cannot be any doubt that keeping in view the fact that workers are being engaged by the authority concerned as DDT Spray Workers on Seasonal basis under a Central Government Scheme for a long period of time, there is need for streamlining the entire process of selection of candidate for engagement as Seasonal Worker, for which the concerned authorities shall issue necessary guideline so that the fair procedure for selection of candidate even as Seasonal Worker is followed.

32. The further contention of the petitioners in the 3rd and the 4th batch of writ petitions as discussed above, is that the due weightage to the services rendered by them as DDT Spray Worker under a Central Government Scheme has not been given, while making selection and appointment to the post of FW/SFW under the State Government, which according to the petitioners, keeping in view the nature, duties and responsibilities, they are entitled to.

33. The petitioners though in the writ petitions made statement that the nature, duties and responsibilities of DDT Spray Worker under the scheme are similar with that of the FW/SFW, details of such nature, duties and responsibilities fixed in both categories have not been pleaded in the writ petitions. In the absence of such pleadings, this Court is not in a position to come to a definite finding whether the nature, duties and responsibilities of DDT Spray Worker under the Scheme is similar as that of SF/SFW under the Directorate of Health Service, Assam. It is for the authority to consider the same and, if, upon consideration it is found that the experience gathered by such persons as DDT Spray Worker under the Scheme is of any help and would be beneficial, necessary weightage to the service rendered as DDT Spray Worker is to be given while making selection and appointment to the post of FW/SFW, as fairly contended by the learned Sr. counsel for the respondents. It is also not for the Court to decide to what extent the preference/ weightage can be given in making selection to the post of FW/SFW, which is also for the authority to determine. A single bench of this Court in W.P.(C) No.1495/03 (Anser Ali Sheikh -Vs- The State of Assam & Ors.) has directed the authority to give due consideration with weightage to the past services of the DDT Spray Workers in making selection to the post of SW/SFW. In the said case the Court has not decided what would be the weightage due. Therefore, before giving such preference/ weightage and fixing extent of the same, the authority has to come to the finding as to whether the services rendered by such persons as DDT Spray Worker is of any relevance to the services to be rendered as SW/SFW. The learned Sr. counsel, as discussed above, has fairly contended that the due weightage to their period of services as DDT Spray Worker will definitely be given to this class of persons provided the authority comes to the finding that the duties and responsibility attached to both of them are similar and the services rendered by such persons as DDT Spray Workers is of any help and beneficial as SF/SFW.

34. The petitioners in the 3rd writ petition have also challenged the fresh advertisement dated 29.09.2006 on the ground of its being vague as the advertisement does not disclose different categories of posts available in Grade-IV and the number of vacancies in each category.

35. As discussed above, the learned Sr. counsel for the respondents has fairly submitted that the authority will issue a corrigendum giving the classification of different posts in Grade-IV, which are available for recruitment, including the number of posts available in each category, before further proceeding with the process of selection pursuant to the advertisement dated 29.09.2006. It has further been fairly contended by the learned Sr. counsel for the respondents that the authority would also, in the event of deciding to giving any preference/weightage to the past services to the DDT Spray Worker would also decide about relaxing the upper age limit for such persons and shall also give a further opportunity to such persons to file their applications. Hence the ground of vagueness, on which the advertisement has been challenged, in view of this concession, need not be gone into.

36. In view of the said discussion as well as the concession given by the respondents, it is hereby ordered that, before proceeding further with the process of selection, pursuant to the advertisement dated 29.09.2006, the respondents are directed to:-

(i) consider as to the relevancy or otherwise of the services rendered by the DD

T Spray Workers under the Government of India Sponsored Scheme, to the services of the FW/SFW and to take a decision in that regard and, thereafter, to fix the extent of preference/ weightage to be given to such service in making selection to the post of FW/SFW.

(ii) issue the corrigendum in widely circulated newspapers published from Assam indicating the extent of preference/weightage to be given and giving a further o pportunity to such persons to file their applications.

(iii) consider whether any age relaxation can be given to such persons, if so, t o indicate the same in the corrigendum to be issued as aforesaid.

(iv) issue corrigendum indicating the different categories of posts in Grade-IV available for recruitment including the numbers of posts available in each categ ory.

37. In view of the above, I do not find any reason to interfere with the advertisement dated 29.09.2006, as no prejudice would be caused to the said group of persons who worked as DDT Spray Workers, as they will get a fair chanc e of making their applications in terms of the aforesaid observations and direct ions.

38. The 3rd, 4th and the 5th batches of writ petitions are according ly disposed of.

Keeping in view the facts and circumstance involved in the writ petitions, I do not make any order as to cost.